



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

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EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION  
*[Signature]*

(1) TEAS INSTRUMENTS  
INCORPORATED,

Plaintiff and Counter-  
defendant,

vs.

Civil Action No. 2-03CV-115 (WARD)

JURY

(1) INTERGRAPH CORPORATION and (2)  
Z/I IMAGING CORPORATION,

Defendants,  
Counterclaimants, and  
Third-Party Plaintiffs.

vs.

(1) AMAX ENGINEERING  
CORPORATION, (2) AMERICAN  
PREDATOR CORPORATION, (3) ARROW  
ELECTRONICS, INC., (4) CELTIC  
TECHNOLOGY, LLC, (5) EXCLUSIVE  
TECHNOLOGY GROUP, LLC, (6)  
MEMORY 4 LESS, INC., (7) PIONEER-  
STANDARD ELECTRONICS, INC., (8)  
RAND TECHNOLOGY, INC., (9) N.F.  
SMITH AND ASSOCIATES, L.P. d/b/a  
SMITH & ASSOCIATES, (10) SOURCE  
CODE CORP. d/b/a SCC DISTRIBUTION,  
(11) TECH DATA CORPORATION, and  
(12) XTRAPLUS CORPORATION d/b/a  
GOOGLEGEAR.COM,

Third-Party  
Defendants.

INTERGRAPH CORPORATION'S AND Z/I IMAGING CORPORATION'S THIRD-  
PARTY COMPLAINT FOR BREACH OF IMPLIED WARRANTY AND INDEMNITY  
(Fed. R. Civ. P. 14)

### **UNDERLYING ACTION**

1. Plaintiff TEXAS INSTRUMENTS INCORPORATED ("TI") has filed a complaint against Defendants INTERGRAPH CORPORATION ("Intergraph") and Z/I IMAGING CORPORATION ("Z/I Imaging") in this action alleging infringement of United States Patent No. 5,297,279 ("the '279 Patent"), United States Patent No. 5,329,471 ("the '471 Patent"), United States Patent No. 5,437,027 ("the '027 Patent"), United States Patent No. 5,742,538 ("the '538 Patent"), and United States Patent No. 6,065,113 ("the '113 Patent"). A copy of the Plaintiff's Complaint, including exhibits thereto, is attached to this Third-Party Complaint as Exhibit A.

2. Intergraph and Z/I Imaging each have separately filed Answers to TI's Complaint denying the allegations of infringement, raising affirmative defenses to the alleged infringement claims, and asserting a counterclaim against TI. A copy of the Answer and Counterclaim filed by Intergraph is attached to this Third-Party Complaint as Exhibit B. A copy of the Answer and Counterclaim filed by Z/I Imaging is attached to this Third-Party Complaint as Exhibit C.

### **THE PARTIES**

3. Intergraph is a corporation organized under the laws of the State of Delaware with its principle place of business located at 288 Dunlop Boulevard, Huntsville, Alabama 35824.

4. Z/I Imaging is a corporation organized under the laws of the State of Delaware with its principle place of business located at 301 Cochrane Road, Suite 9, Huntsville, Alabama 35824. Z/I Imaging is a wholly owned subsidiary of Defendant and Third-Party Plaintiff Intergraph.

5. Third-Party Defendant AMAX ENGINEERING CORPORATION ("AMAX") is a corporation organized under the laws of the State of California, with a principle place of business located at 1565 Reliance Way, Fremont, California 94539.

6. Third-Party Defendant AMERICAN PREDATOR CORPORATION ("American") is a corporation organized under the laws of the State of California, with a principle place of business located at 18655 Madrone Parkway, Building 180, Morgan Hill, California 95037.

7. Third-Party Defendant ARROW ELECTRONICS, INC. (“Arrow”) is a corporation organized under the laws of the State of New York, with a principle place of business located at 50 Marcus Drive, Melville, New York 11747.

8. Third-Party Defendant CELTIC TECHNOLOGY, LLC (“Celtic”) is a limited liability company organized under the laws of the State of California, with a principle place of business located at 384 Forest Avenue, Suite 23 Laguna Beach, California 92651.

9. Third-Party Defendant EXCLUSIVE TECHNOLOGY GROUP, LLC (“Exclusive”) is a limited liability company organized under the laws of the State of Georgia, with a principle place of business located at 4437 Park Drive, Suite C, Norcross, Georgia 30093.

10. Third-Party Defendant MEMORY 4 LESS, INC. (“Memory”) is a corporation organized under the laws of the State of California, with a principle place of business located at 2622 W. Lincoln Avenue, Suite 104, Anaheim, California 92801.

11. Third-Party Defendant PIONEER-STANDARD ELECTRONICS, INC. (“Pioneer”) is a corporation organized under the laws of the State of Ohio, with a principle place of business located at 6065 Parkland Boulevard, Mayfield Heights, Ohio 44124.

12. Third-Party Defendant RAND TECHNOLOGY, INC. (“Rand”) is a corporation organized under the laws of the State of California with a principle place of business located at 17595 Cartwright Road, Irvine, California 92614.

13. Third-Party Defendant N.F. SMITH AND ASSOCIATES, L.P. d/b/a SMITH & ASSOCIATES (“Smith”) is a limited partnership organized under the laws of the State of Texas, with a principle place of business located at 5306 Hollister, Houston, Texas 77040.

14. Third-Party Defendant SOURCE CODE CORP. d/b/a SCC DISTRIBUTION (“SCC”) is a corporation organized under the laws of the State of Massachusetts, with a principle place of business located at 290 Vanderbilt Avenue, Norwood, Massachusetts 02062.

15. Third-Party Defendant TECH DATA CORPORATION (“Tech Data”) is a corporation organized under the laws of the State of Florida, with a principle place of business located at 5350 Tech Data Drive, Clearwater, Florida 33760.

16. Third-Party Defendant XTRAPLUS CORPORATION d/b/a GOOGLEGEAR.COM ("Googlegear") is a corporation organized under the laws of the State of California, with a principle place of business located at 38897 Cherry Street, Newark, California 94560.

### **JURISDICTION AND VENUE**

17. This Court has supplemental jurisdiction within the meaning of 28 U.S.C. Section 1367 of the claims against each of and all of the Third-Party Defendants in that the Third-Party Complaint arises out of the same transactions and occurrences as the matters alleged in the original Complaint previously filed by TI in this case.

### **FACTS COMMON TO ALL CLAIMS**

18. At all times material hereto, Intergraph has manufactured and sold and does now manufacture and sell computer software and hardware products and systems that are used in a variety of industries, including those in this judicial district.

19. At all times material hereto, Z/I Imaging has manufactured and sold and does now manufacture and sell computer hardware products, including its Digital Mapping Camera and Image Station 2002 products, each of which contain Intel Corporation ("Intel") processors, that are used in a variety of industries in this judicial district.

20. At all times material hereto, AMAX offered for sale and sold and does now offer for sale and sell a variety of Intel products, including Intel processors.

21. At all times material hereto, American offered for sale and sold and does now offer for sale and sell a variety of Intel products, including Intel processors.

22. At all times material hereto, Arrow offered for sale and sold and does now offer for sale and sell a variety of Intel products, including Intel processors.

23. At all times material hereto, Celtic offered for sale and sold and does now offer for sale and sell a variety of Intel products, including Intel processors.

24. At all times material hereto, Exclusive offered for sale and sold and does now offer for sale and sell a variety of Intel products, including Intel processors.

25. At all times material hereto, Memory offered for sale and sold and does now offer for sale and sell a variety of Intel products, including Intel processors.

26. At all times material hereto, Pioneer offered for sale and sold and does now offer for sale and sell a variety of Intel products, including Intel processors.

27. At all times material hereto, Rand offered for sale and sold and does now offer for sale and sell a variety of Intel products, including Intel processors.

28. At all times material hereto, Smith offered for sale and sold and does now offer for sale and sell a variety of Intel products, including Intel processors.

29. At all times material hereto, SCC offered for sale and sold and does now offer for sale and sell a variety of Intel products, including Intel processors.

30. At all times material hereto, Tech Data offered for sale and sold and does now offer for sale and sell a variety of Intel products, including Intel processors.

31. At all times material hereto, Googlegear offered for sale and sold and does now offer for sale and sell a variety of Intel products, including Intel processors.

32. At various times, all material hereto, Intergraph has purchased Intel processors and products containing Intel processors from each of the following Third-Party Defendants for use in products that have been manufactured, offered for sale, and sold by Intergraph. Also at various times, all material hereto, Intergraph has purchased Intel processors and products containing Intel processors from each of the following Third-Party Defendants for use in products that are used by Intergraph.

- a. Celtic;
- b. Pioneer;
- c. Rand;
- d. Smith;
- e. SCC;
- f. Tech Data; and
- g. Googlegear.

33. At various times, all material hereto, Z/I Imaging has purchased Intel processors and products containing Intel processors from each of the following Third-Party Defendants for use in products that have been manufactured, offered for sale, and sold by Z/I Imaging and by Intergraph:

- a. AMAX;
- b. American;
- c. Arrow;
- d. Exclusive;
- e. Memory; and
- f. Pioneer.

34. In the underlying action, TI has accused Intergraph and Z/I Imaging of infringing one or more claims of the '538 Patent, the '471 Patent, and the '113 Patent. Said claims are infringed, if at all, based on Intergraph's and Z/I Imaging's use of Intel processors in certain of the products each has offered for sale, sold, or used.

**FIRST CLAIM FOR RELIEF**  
**(BREACH OF IMPLIED WARRANTY)**

35. Intergraph and Z/I Imaging hereby incorporate by reference the allegations of paragraphs 1 through 34, hereinabove as if set forth in full herein.

36. At the time that Intergraph and Z/I Imaging each purchased Intel processors from each of the Third-Party Defendants, pursuant to Alabama Code Section 7-2-312 and/or the commercial statutes of any other jurisdiction(s) that one or more of the Third-Party Defendants allege cover the transactions at issue, each of the Third-Party Defendants impliedly warranted that the goods each sold to Intergraph and Z/I Imaging were not subject to any valid third party claim for patent infringement.

37. By reason of the foregoing implied warranty against infringement that accompanies each sale made by each of the Third-Party Defendants to Intergraph and Z/I Imaging, if TI is successful against Intergraph and Z/I Imaging on its claims of infringement of the '538 Patent, the '471 Patent, and/or the '113 Patent, then the Third-Party Defendants and each

of them is jointly and severally liable over to Intergraph and Z/I Imaging for the amount of any recovery by TI and for the attorney's fees and costs incurred by Intergraph and Z/I Imaging in defense of the action.

**SECOND CLAIM FOR RELIEF  
(COMMON LAW INDEMNITY)**

38. Intergraph and Z/I Imaging hereby incorporate by reference the allegations of paragraphs 1 through 37, hereinabove as if set forth in full herein.

39. If TI is successful against Intergraph and Z/I Imaging on its claims of infringement of the '538 Patent, the '471 Patent, and/or the '113 Patent, then the Third-Party Defendants and each of them having sold the infringing processors to Intergraph and Z/I Imaging is therefore jointly and severally liable over to Intergraph and Z/I Imaging for the amount of any recovery by TI and for the attorney's fees and costs incurred by Intergraph and Z/I Imaging in defense of the action brought by TI.

**PRAYER**

WHEREFORE, Intergraph and Z/I Imaging request judgment against Third-Party Defendants as follows:

1. That Third-Party Defendants and each of them are solely liable to TI in this action on TI's allegations of infringement of the '538 Patent, the '471 Patent, and the '113 Patent;
2. Alternatively, that Third-Party Defendants and each of them are jointly and severally liable over to Intergraph and Z/I Imaging for any liability that Intergraph and Z/I Imaging are determined to have to TI for infringement of the '538 Patent, the '471 Patent, and/or the '113 Patent;
3. Awarding Intergraph and Z/I Imaging their attorneys fees and expenses incurred in defense of the action brought by TI and incurred in connection with this Third-Party action jointly and severally against the Third-Party Defendants and each of them;
4. Awarding Intergraph and Z/I Imaging its costs of suit; and
5. Granting Intergraph and Z/I Imaging such other and further relief as the Court may deem just and equitable.

DATED: August 6, 2003

Respectfully submitted,

By:



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and Z/I IMAGING CORPORATION

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing instrument was served on the 6th day of August, 2003, by facsimile and regular mail, with proper postage affixed, on the following:

Kenneth R. Adamo Thomas R. Jackson Michael Newton JONES DAY 2727 N. Harwood Street Dallas, Texas 75201	Carl Roth THE ROTH LAW FIRM 115 North Wellington, Suite 200 Marshall, Texas 75670 Facsimile: 903/935-1797
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Exhibits not scanned.